

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DR. MAXIMO GOMEZ NACER, M.D.,

Plaintiff,

-against-

DIVISION OF GENERAL MEDICINE, NYPH;  
DR. STEVEN SHEA, Director of the Division;  
MR. IVAN ACOSTA, Producer of Music for  
Children,

Defendants.

20-CV-5197 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, appearing *pro se*, invokes the Court’s federal question jurisdiction, alleging that Defendants violated his federal constitutional rights. By order dated July 29, 2020, the Court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”). For the reasons set forth below, the Court dismisses the complaint but grants Plaintiff 30 days’ leave to replead his claims.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470

F.3d 471 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

## BACKGROUND

Plaintiff asserts his claims using the Court’s general complaint form, which he supplements with more than 85 additional pages of text and exhibits. He checks the box on the form invoking the Court’s federal question jurisdiction, and in the section of the form asking which of his federal constitutional or federal statutory rights have been violated, Plaintiff writes, “First Amendment of the Constitution or Freedom of Speech. Fourth Amendment of the Constitution or violation of privacy. Fourteenth Amendment of the Constitution, deprivation of due process; and exposing a member of the honorable medical class to extreme duress,

harassment and slavery-like circumstances under 42 U.S.C. section 1983.”<sup>1</sup> (ECF No. 2, at 2.)<sup>2</sup> He states that his claims arose at the New York Presbyterian Hospital from “2001 to today.” (*Id.* at 5.)

The following allegations are taken from the complaint and the exhibits attached thereto. Plaintiff was formerly working at the Division of General Medicine of New York Presbyterian Hospital while studying to become a certified doctor in the United States, “which he accomplishe[d] [i]n July 2001.” (*Id.*) Plaintiff writes,

But then a terrible leak happens with the specific intentions of making it virtually impossible to find any job in the private sector and as a consequence of this collision, he is introduced to the ‘Compassionate Agenda’ on July 2002 and since then he has been exposed to an incremental deprivation of Constitutional rights described further in detail on this complaint.

(*Id.*)

Plaintiff maintains that he is “the inventor of the ‘Animal Powered Electricity Generator’ and the ‘Gravity Buoyancy Solutions’ clean energy alternatives that represent savings in oil imports at significant scale.” (*Id.*) Plaintiff alleges that he

was building the ‘Animal Powered Electricity Generator’ at the apartment of the hospital at the moment when the leak happened and he had disclosed his business plan to generate abundant alternative clean energy with the Director of the Division of General Medicine of the Hospital (NYPH) at the time, therefore [Plaintiff] has concluded that Dr. Steven Shea is directly or indirectly responsible for the torture-like circumstances present in the life of Dr. Gomez ever since, to the point he has been a homeless American for more than six years now.

(*Id.* at 6.) Plaintiff alleges he has been subjected to “forced servitude and slavery for nearly 17 years.” (*Id.*)

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<sup>1</sup> Plaintiff writes in all capital letters in the handwritten sections of the complaint. When quoting those sections of the complaint, the Court uses standard capitalization for readability.

<sup>2</sup> Page numbers refer to those generated by the Court’s electronic filing system.

Plaintiff attaches to the complaint a letter addressed to “the Clerk” that includes more than 80 pages of “exhibits.” In the letter, Plaintiff states that he “has been blocked from equal access to jobs, salary, credit, property, housing, or even the right to live in a peaceful place and therefore the ability of citizens to pursue a normal life, with liberty, and the pursuit of happiness.” (*Id.* at 8.) Plaintiff asserts that “national secrets” were released in 2001, and that it was done to make it difficult for him to find a job and to “create a new form of slavery that uses among other elements, the use of a virtual electronic virtual wall.” (*Id.* at 9.) These violations are “deeply associated with the new capability of centralized filters, the so-called ‘cookies’, and the new centralized (geographically remote) capacity to render useless any possible effort of the quiet citizen to pursue a normal life.” (*Id.*) He states that

[p]eople working under the umbrella of the States, agencies, and divisions have to become accountable for the use of any pilot projects that discriminate or violate the American Constitution even if they are just intermediaries or perpetrators that operate from a distance in another State and are using the capability to remotely destroy or modify records such as job applications, grants or even emailed between regular citizen[s].

(*Id.*)

Plaintiff attaches numerous exhibits, which include a “timeline” of events, illustrations, excerpts from his patent application, photographs, cartoons, and other materials, along with descriptions of each.

Plaintiff seeks monetary compensation from the Division of General Medicine “due to loss of livelihood.” (*Id.* at 17.) He includes extensive documentation of the income he claims to have lost, which includes “[l]oss of business and damage” to Zoo-Mechanics Corporation, a company for which Plaintiff is Founder and President. (*Id.* at 18-19.)

## DISCUSSION

### A. Claims under 42 U.S.C. § 1983

To the extent Plaintiff is asserting claims under 42 U.S.C. § 1983 that Defendants violated his federal constitutional rights, those claims must be dismissed. A claim for relief under § 1983 must allege facts showing that each defendant acted under the color of a state “statute, ordinance, regulation, custom or usage.” 42 U.S.C. § 1983. Private parties are therefore not generally liable under the statute. *Sykes v. Bank of America*, 723 F.3d 399, 406 (2d Cir. 2013) (citing *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001)); see also *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (“[T]he United States Constitution regulates only the Government, not private parties.”).

Because New York Presbyterian Hospital is a private, non-profit hospital, and Defendants Shea and Acosta are private parties who do not work for any state or other government body, Plaintiff fails to state a § 1983 claim against these defendants.

### B. Rule 8

The Court must also dismiss any remaining claims that Plaintiff may be asserting because the complaint fails to comply with Rule 8’s requirement that a complaint must contain a “short and plain statement of the claim showing the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “A complaint fails to comply with Rule 8(a)(2) if it is ‘so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.’” *Strunk v. United States House of Representatives*, 68 F. App’x. 233, 235 (2d Cir. 2003) (summary order) (quoting *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988)).

By presenting a great deal of disjointed and confusing information, Plaintiff has rendered it impossible for the Court to discern what, if any, other claims for relief he may be seeking to

assert. The Court therefore dismisses any remaining claims Plaintiff may be asserting for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

### **LEAVE TO REPLEAD**

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin*, 861 F.2d at 42. Indeed, the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Because Plaintiff is proceeding *pro se*, and in an abundance of caution, the Court grants Plaintiff 30 days’ leave to replead his claims. In any amended complaint, Plaintiff must plead facts with sufficient clarity to state a plausible claim for relief.

If Plaintiff chooses to file an amended complaint, the Court strongly encourages him to seek assistance from someone who can help him organize his thoughts and claims. If Plaintiff needs legal advice related to this matter, he may contact the New York Legal Assistance Group’s Legal Clinic for Pro Se Litigants in the Southern District of New York, which is a free legal clinic staffed by attorneys and paralegals to assist those who are representing themselves in civil lawsuits in this Court. A copy of the flyer with details of the clinic is attached to this order. The amended complaint, if Plaintiff chooses to file one, should be sent to this Court’s Pro Se Intake Unit.

### **CONCLUSION**

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

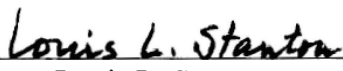
The Court dismisses Plaintiff's complaint for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Clerk of Court is directed to hold this matter open on the docket until a civil judgment is entered.

The Court grants Plaintiff 30 days' leave to replead his claims. If Plaintiff chooses to replead his claims, he must submit any amended complaint to this Court's Pro Se Intake Unit within 30 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 20-CV-5197 (LLS). An Amended Complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the Court will enter a civil judgment consistent with this order and direct the Clerk of Court to terminate this matter.

SO ORDERED.

Dated: August 7, 2020  
New York, New York

  
\_\_\_\_\_  
Louis L. Stanton  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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\_\_\_\_\_  
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*(In the space above enter the full name(s) of the plaintiff(s).)*

**-against-**

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*(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)*

\_\_\_\_ Civ. \_\_\_\_\_ ( \_\_\_\_ )

**AMENDED  
COMPLAINT**

Jury Trial: ☐ Yes ☐ No  
(check one)

**I. Parties in this complaint:**

- A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
County, City \_\_\_\_\_  
State & Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_

- B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.



Defendant No. 1      Name \_\_\_\_\_  
                                  Street Address \_\_\_\_\_  
                                  County, City \_\_\_\_\_  
                                  State & Zip Code \_\_\_\_\_  
                                  Telephone Number \_\_\_\_\_

Defendant No. 2      Name \_\_\_\_\_  
                                  Street Address \_\_\_\_\_  
                                  County, City \_\_\_\_\_  
                                  State & Zip Code \_\_\_\_\_  
                                  Telephone Number \_\_\_\_\_

Defendant No. 3      Name \_\_\_\_\_  
                                  Street Address \_\_\_\_\_  
                                  County, City \_\_\_\_\_  
                                  State & Zip Code \_\_\_\_\_  
                                  Telephone Number \_\_\_\_\_

Defendant No. 4      Name \_\_\_\_\_  
                                  Street Address \_\_\_\_\_  
                                  County, City \_\_\_\_\_  
                                  State & Zip Code \_\_\_\_\_  
                                  Telephone Number \_\_\_\_\_

**II.      Basis for Jurisdiction:**

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A.      What is the basis for federal court jurisdiction? *(check all that apply)*

☐ Federal Questions

☐ Diversity of Citizenship

B.      If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

C.      If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship \_\_\_\_\_

Defendant(s) state(s) of citizenship \_\_\_\_\_

\_\_\_\_\_

### III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? \_\_\_\_\_

\_\_\_\_\_

B. What date and approximate time did the events giving rise to your claim(s) occur? \_\_\_\_\_

\_\_\_\_\_

C. Facts: \_\_\_\_\_

\_\_\_\_\_

What  
happened  
to you?

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\_\_\_\_\_

Who did  
what?

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\_\_\_\_\_

Was anyone  
else  
involved?

\_\_\_\_\_

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Who else  
saw what  
happened?

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### IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. \_\_\_\_\_

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